

E-Filed 10/21/15

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

TESSERA, INC.,
Plaintiff,

v.

UTAC (TAIWAN) CORPORATION,
Defendant.

Case No. 10-cv-04435-EJD (HRL)

**ORDER RE: DISCOVERY DISPUTE
JOINT REPORT 18**

Re: Dkt. No. 368

Tessera, Inc. (“Tessera”) sues UTAC (Taiwan) Corporation (“UTC”) for breach of contract and patent infringement. Dr. Bravman wrote an expert report for Tessera, and the parties filed discovery dispute joint report (“DDJR”) 14 when they failed to agree on whether the scope of mandatory expert discovery required Tessera to produce “certain materials and information” related to Dr. Bravman’s report. Dkt. No. 336. Tessera argued, in part, that unproduced scanning electron microscope photos of semiconductor packages were non-discoverable work product because those photos were created for this case at the direction of Tessera’s lawyers and Dr. Bravman did not review, generate, or rely upon those photos. The court resolved DDJR 14, in part, by ruling that Tessera may withhold any such unproduced photos as work product. Dkt. No. 361 at 3.

The parties now dispute whether Tessera accurately described how the photos withheld as work product were created. UTC quotes deposition testimony from Dr. Bravman that suggests photos were taken according to requests and instructions from Dr. Bravman; UTC argues that Dr. Bravman therefore “generated” the withheld photos and Tessera must produce all of them under Federal Rule of Civil Procedure (“FRCP”) 26(a)(2)(B). UTC also argues Tessera has been unduly evasive during the discovery process and that therefore Tessera should provide a log of withheld

1 photos to UTC. Tessera responds that UTC's request is an untimely attempt to relitigate issues
2 that the court already resolved. Tessera also asserts that Dr. Bravman received a subset of
3 preexisting work-product photos and that no new photos were generated in response to his
4 requests.

5 Discussion

6 UTC raises this dispute far too late. Expert discovery closed on July 17, 2015, and UTC
7 was required to file this DDJR no more than seven days later. Dkt. No. 342 at 1; Civ. L.R. 37-3;
8 Dkt. No. 118 at 9. UTC deposed Dr. Bravman on July 14, 2015. This DDJR is based on that
9 deposition testimony and UTC could have timely filed this DDJR within the ten days following
10 the deposition. UTC, instead, filed this DDJR on October 16, 2015.

11 UTC argues it has not waived this dispute because UTC deposed Dr. Bravman after DDJR
12 14 had already been filed. Dkt. No. 368 at 4 n.1. That does not explain why UTC deposed Dr.
13 Bravman and then waited three months to file a DDJR about his deposition testimony. The
14 dispute in this DDJR relates to the disputes in DDJR 14, but that did not preclude UTC from
15 timely filing this DDJR. In the past UTC has raised disputes that relate to each other by
16 concurrently filing separate DDJRs that relate to each other, Dkt. Nos. 337, 339; likewise, UTC
17 could have timely filed this DDJR in July even though related disputes had been filed in DDJR 14.

18 UTC also cites *City of Owensboro v. Kentucky Utilities Co.*, No. 4:04 CV-87-M, 2008 WL
19 4542674, at *2 (W.D. Ky. 2008), to argue discovery disputes related to FRCP 26(a)(2)(B) cannot
20 be untimely. Dkt. No. 368 at 4 n.1. UTC misreads *Owensboro*, which held that a party is not
21 required to separately raise FRCP 26(a) before that party may request the exclusion of expert
22 testimony under FRCP 37(c). That holding is not binding on this court and, in any event, that
23 holding provides no justification for the violation of Local Rule 37-3 and the violation of the
24 parties' stipulated protective order.

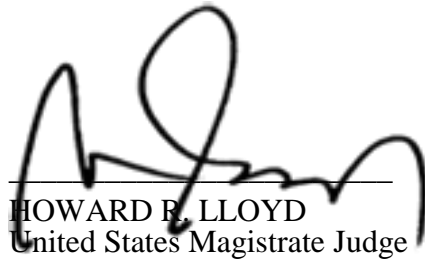
25 Conclusion

26 The court shall not rule on the merits of this discovery dispute because the dispute was not
27 timely presented to the court as required by Civil Local Rule 37-3 and the parties' stipulated
28

protective order. The court shall not order the relief requested by UTC.

IT IS SO ORDERED.

Dated: 10/21/15



HOWARD E. LLOYD
United States Magistrate Judge